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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/532,397	04/22/2005	Jordi Bessa Bellmunt	932.1291	1523

21831 7590 06/02/2006

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EXAMINER

SOLOLA, TAOFIQ A

ART UNIT PAPER NUMBER

1626

DATE MAILED: 06/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/532,397

Applicant(s)

BESSA BELLMUNT ET AL.

Examiner

Taofiq A. Solola

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1626

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 1.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

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Claims 1-7 are pending in this application.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

Claims 4-5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

There is no proper antecedent basis for "the hydrogen cyanide" in claim 1. Therefore, the claims are indefinite.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jozsef Neu, et al., WO 2004/026845, alone or in view of David Sawyer, EP 0 247 892 B1.

Applicant claims a process of making 3,5-diamino-6-(2,3-dichlorophenyl)-1,2,4-triazine, comprising the reaction of 2,3-dichlorobenzoyl cyanide with a solution of aminoguanidine bicarbonate and methanesulfonic (methanesulphonic) acid to obtain the intermediate compound, 2-(2,3-dichlorophenyl)-2-(aminoguanidine) acetonitrile, which was cyclised in an aliphatic alcohol under reflux. Applicant also claims the process of making the intermediate

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(claims 1-5). In preferred embodiments the process of the intermediate is performed at 20-80 °C and the pH of the medium is adjusted above the pKa of "the hydrogen cyanide".

Determination of the scope and content of the prior art (MPEP §2141.01)

Jozsef Neu, et al., teach a process of making 3,5-diamino-6-(2,3-dichlorophenyl)-1,2,4-triazine, comprising the reaction of aminoguanidine bicarbonate and methanesulfonic acid to obtain aminoguanidine dimesylate, which is reacted with 2,3-dichlorobenzoyl cyanide to obtain 2-(2,3-dichlorophenyl)-2-(aminoguanidine) acetonitrile, which without isolation is converted to the final product with magnesium oxide and water. The process of the intermediate is performed at 40-45 initially and finally at 65-70 °C. See examples 1 and 2. Jozsef Neu, et al., also teach that several prior arts use aliphatic alcohol in the cyclization of 2-(2,3-dichlorophenyl)-2-(aminoguanidine) acetonitrile. See page 1, lines 26-27 and page 2, line 6.

David Sawyer, teaches cyclization of 2-(2,3-dichlorophenyl)-2-(aminoguanidine) acetonitrile with alcohol, preferably C1-4 alcohol, such as methanol or ethanol. See column 2, lines 32-34.

Ascertainment of the difference between the prior art and the claims (MPEP §2141.02)

The difference between the instant invention and that of Jozsef Neu, et al., is that applicant do not isolate aminoguanidine dimesylate from the solution of aminoguanidine bicarbonate and methanesulfonic acid before adding 2,3-dichlorobenzoyl cyanide as in the process of Jozsef Neu, et al. Also, Jozsef Neu, et al., do not teach adjustment of the pH of the medium.

Finding of prima facie obviousness--rational and motivation (MPEP §2142.2413)

However, aminoguanidine dimesylate is inherently formed in the solution of aminoguanidine bicarbonate and methanesulfonic acid by applicant. None isolation of aminoguanidine dimesylate and adjusting the pH of the medium are not patentable significant

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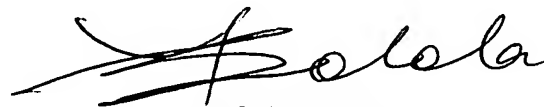
absent a showing of unexpected results due to each modification. Therefore, the instant invention is prima facie obvious from the teachings of Jozsef Neu, et al., and David Sawyer. One of ordinary skill in the art would have known not to isolate aminoguanidine dimesylate from the solution of aminoguanidine bicarbonate and methanesulfonic acid before adding 2,3-dichlorobenzoyl cyanide at the time the instant invention was made. The motivation is that in the process of Jozsef Neu, et al., the aminoguanidine dimesylate is redissolved in the next step. The motivation is also to avoid the prior art of Jozsef Neu, et al. Applicant must be on notice that unexpected result must be in the form of a side-by-side study.

Telephone Inquiry

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Taofiq A. Solola, PhD. JD., whose telephone number is (571) 272-0709.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Joseph McKane, can be reached on (571) 272-0699. The fax phone number for this Group is (571) 273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (571) 272-1600.



**TAOFIQ SOLOLA
PRIMARY EXAMINER**

Group 1626

May 30, 2006